DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

I. D. #4731

ENERGY DIVISION **RESOLUTION E-3938**

July 21, 2005

R E S O L U T I O N

Resolution E-3938. San Diego Gas & Electric (SDG&E) requests approval of an Agency Agreement with the California Department of Water Resources (DWR) for the implementation of the California Consumer Power and Conservation Financing Authority (CPA) Demand Reserves Partnership (DRP) Program.

By Advice Letter (AL) 1512-E-B filed on October 8, 2004.

SUMMARY

The submitted Agency Agreement from SDG&E is denied. SDG&E is directed to submit a revised Agency Agreement.

The proposed agency agreement with DWR submitted by SDG&E via their advice letter 1512-E-B is denied. SDG&E is ordered to submit a revised Agency Agreement that contains a liability cap of $1 million.

BACKGROUND

The Demand Reserves Partnership Has Been a Demand Response Resource since 2002.

The Demand Reserves Partnership (DRP) was created in 2002. The foundation of the program is a five-year contract between the California Consumer Power and Conservation Financing Authority (CPA) and the California Department of Water Resources (DWR). The contract functions much like the other power supply contracts signed by DWR on behalf of the utilities by providing power, where and when needed, but through reductions in demand, rather than generation.

There are various supporting contracts, called "Demand Reserves Provider Agreements", which underlie the contract between DWR and the CPA. These contracts, between the CPA and several third-party aggregators, specify the terms and conditions of how aggregators provide power to DWR. The terms of the supporting

contracts mirror the terms of the contract between DWR and CPA. The Demand Reserve Providers, in turn, have individual agreements with electricity customers who provide the actual demand reduction.

As currently operated, the contracts provide that, when notified by DWR, customers who were consuming power in the normal course of business, curtail their load and make power available for the customers of the utilities. An electronic notification is sent from DWR, to the CPA (and its contractor Automated Power Exchange (APX)), to the aggregators and finally to the customers. In exchange for the reduction in load, participants are paid a monthly capacity payment (based on the amount of load committed for reduction) along with an energy payment (actual amount of energy reduced) when the program is triggered.

The contract between DWR and CPA allow DWR to trigger the program during high wholesale market prices or when energy supplies are short. To date, the program has been triggered by DWR only for reliability and testing purposes. The program operates year-round, but is designed to focus on the summer months. In Summer 2002, the program's capacity was 15 megawatts (MW) of capacity; by Summer 2004, the program's capacity had increased to 356 MWs. The contract between DWR and CPA provides for two more summers of operation (2005 and 2006).

The Commission Ordered the Utilities to File Implementation Plans for the DRP

In D.03-06-032, the Commission recognized the DRP as a viable and important program, and directed PG&E, SCE and SDG&E (the utilities) to coordinate their scheduling activities with the CPA to ensure that the DRP resources are actually dispatched when it is cost effective to do so. The utilities were specifically ordered to file implementation plans detailing how they will use the DRP resource effectively.

In compliance with D.03-06-032, the utilities filed advice letters containing their implementation plans on July 7, 2003. In these advice letters the utilities reported that they must have agency agreements with DWR that enables them to schedule and dispatch of DRP resources on behalf of DWR, essentially allowing them to operate as DWR's limited agents. At the time of their July filings, the utilities reported that negotiations with DWR were initiated and that final agency agreements were targeted for mid-July.

However for the remainder of 2003, the utilities and DWR were unsuccessful in developing the agency agreements as the negotiations between them could not resolve their differences on certain issues.

The Commission provided Guidance to the Utilities and DWR Regarding the Agency Agreements

On January 26, 2004, an ALJ ruling was issued directing the utilities to file status reports on the impediments to executing the proposed agency agreements. DWR and the CPA were encouraged to file status reports as well. Each utility complied with the ruling, and DWR submitted its status report. Several parties filed comments regarding the status reports.[1]

On April 1, 2004, an Assigned Commissioner's Ruling (ACR) was issued providing guidance on the impediments discussed in the reports and comments. The primary issue addressed in the ruling was absolving the utilities of least-cost dispatch requirements should DWR trigger the program for reliability or testing purposes as part of its statutory responsibility. That ruling also ordered the utilities to resume negotiations with DWR, finalize agency agreements with the department, and submit final agency agreements via supplemental advice letters.

In response to a memorandum from DWR dated April 26, 2004, a second ACR was issued on May 3, 2004, providing additional clarification on the issue of testing the DRP in relation to least-cost dispatch requirements.

Commission Resolution E-3875 directed the Utilities to file Finalized Agency Agreements

As directed by the ACRs, the utilities filed their proposed agency agreements via advice letter on May 10, 2004. However each utility noted in its filing that it was unable to resolve every issue with DWR, and thus the agency agreements, as proposed in their filings, were not agreed to by DWR. Each utility argued that in spite of the remaining differences with DWR, the Commission should adopt the agency agreements as proposed in their respective advice letters. Commission Resolution E-3875 declined to approve the agency agreements proposed in the May 2004 advice letters, and resolved the remaining issues between DWR and the utilities. The utilities were ordered to file supplemental advice letters with finalized agency agreements that incorporate the findings and modifications adopted by Resolution E-3875. On October 8, 2004, SDG&E filed supplemental Advice Letter 1512-E-B in compliance with the resolution.

[1] DWR, CPA, APX, Celerity Energy, Onsite Energy Corp., Ancillary Services Coalition, DBS Industries, and Excel Energy Technologies, Ltd., filed comments.

NOTICE

Notice of AL 1512-E-B was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of its AL was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

DWR submitted a memorandum dated October 26, 2004 providing comments on AL 1512-E-B, specifically noting that it (DWR) did not agree with the terms of the draft agency agreement attached to the advice letter. DWR's memorandum effectively constitutes a protest to SDG&E's advice letter.

SDG&E responded to DWR's memorandum on November 2, 2004.

DISCUSSION

Cap on Liability

When SDG&E filed its May 2004 advice letter, SDG&E and DWR were unable to come to terms in regards to the issue of liability in their agency agreement. Specifically DWR sought to make the utilities liable (with a cap on that liability) on the basis that agents are commonly liable to their principals under commercial agency agreements.

SDG&E appeared to accept the principle of liability as DWR's agent, but was unable to reach an agreement with DWR regarding a cap amount for the liability. Specifically, SDG&E proposed that its liability cap be calculated at a rate of $10,000 per MWh of capacity allocated to SDG&E's territory, with a minimum of $50,000 and a maximum of $200,000 over the term of the agency agreement. DWR on the other hand asserted that SDG&E's cap on liability be set at $1 million, which was the amount either agreed to by the utility (PG&E) or ordered (SCE) by the Commission.

Resolution E-3875 noted that "while the agency agreement is not a typical commercial agreement, it is a commercial agreement nonetheless and DWR is not unreasonable in requiring liability on the part of the utilities as its agents."[2] With respect to a cap on

[2] Resolution E-3875, p. 7

liability, the resolution stated, "SDG&E's cap on liability should be a portion of $1 million based on 2003 peak demand in its territory in comparison to the 2003 peak demand of the other two utilities."[3]

SDG&E's latest agency agreement, as proposed in Advice Letter 1512-E-B, proposes a cap of $80,000 which SDG&E calculated in compliance with the direction provided in the resolution. As noted above, DWR's protest to AL 1512-E-B reiterates DWR's position that SDG&E should have a liability cap of $1 million, and that absent a cap of that amount, DWR will continue to administer the DRP resources located in SDG&E's territory, essentially meaning that DWR will not finalize the proposed agency agreement.

In its response to DWR's protest, SDG&E reiterates the direction provided in Resolution E-3875 and states that at best, participation in the program within SDG&E's territory is not expected to grow more than 20 MWs, far below the amount of capacity within PG&E's territory (as of April 30, 2005 there were approximately 212 MWs in signed up for the DRP in PG&E's territory, while SDG&E had 4.5 MWs signed up in its territory)[4].

We are disappointed that DWR has maintained its position of a $1 million liability cap for its agreement with SDG&E in spite of Resolution E-3875 that directed SDG&E to calculate a prorated cap based on its peak demand in comparison to the peak demand of PG&E and SCE. We do not fully comprehend the rationale of DWR's position since the amount of potential MWs provided by the DRP in SDG&E's territory continues to be far lower than PG&E's.

Our concerns about DWR's position notwithstanding, we direct SDG&E to modify its agency agreement so that it includes a $1 million cap on liability. We direct SDG&E to take this action so that it will be able to dispatch the DRP resources in its territory as we had originally envisioned in D.03-06-032. The value of enabling the utilities to incorporate all available demand response programs, including the DRP, into their portfolios of demand response programs and procurement strategies remains amongst our highest priorities and is consistent with our policy goals outlined in the Energy Action Plan. Approving SDG&E's agency agreement with its current liability cap of

[3] Resolution E-3875, p. 8

[4] Utilities' demand response reports for the month of April 2005.

$80,000 does not move us in that direction. DWR has indicated it will not sign an agreement without a liability cap $1 million, and without the agreement, SDG&E is unable to dispatch the program. Further we remain concerned about potential energy shortages in Southern California this summer. Enabling SDG&E to dispatch the DRP when necessary through a finalized agency agreement provides an additional tool for SDG&E to meet potential shortages this summer.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission.

FINDINGS

1. The Demand Reserves Partnership (DRP), created in 2002, is based upon a five-year contract between the California Consumer Power and Conservation Financing Authority (CPA) and the California Department of Water Resources (DWR).

2. The DRP contract functions much like the other power supply contracts signed by DWR on behalf of the utilities by providing power, where and when needed, but through reductions in demand, rather than generation.

3. "Demand Reserves Provider Agreements", which underlie the contract between DWR and the CPA, specify the terms and conditions of how aggregators provide power to DWR.

4. In exchange for the reduction in load, participants in the DRP are paid a monthly capacity payment (based on the amount of load committed for reduction) along with an energy payment (actual amount of energy reduced) when the program is triggered.

5. To date, the DRP has been triggered by DWR only for reliability and testing purposes.

6. In D.03-06-032, the Commission recognized the DRP as a viable and important program, and directed PG&E, SCE and SDG&E to coordinate their scheduling

activities with the CPA to ensure that the DRP resources are actually dispatched when it is cost effective to do so.

7. On April 1 and May 3, 2004, ACRs were issued that provided guidance to the utilities and DWR regarding impediments to the finalization of their agency agreements.

8. As of May 10, 2004, the utilities and DWR were not able to finalize their agency agreements, and each utility urged the Commission to adopt their proposed agency agreements as submitted in their filings on May 10. DWR urged adoption of their proposed agency agreement submitted on May 11.

9. Commission Resolution E-3875 declined to approve the agency agreements proposed in the May 2004 advice letters, and resolved the remaining issues between DWR and the utilities. The utilities were ordered to file supplemental advice letters with finalized agency agreements that incorporated the findings and modifications adopted by Resolution E-3875.

10. On October 8, 2004, SDG&E filed supplemental advice letter 1512-E-B in compliance with the resolution.

11. Resolution E-3875 noted that "while the agency agreement is not a typical commercial agreement, it is a commercial agreement nonetheless and DWR is not unreasonable in requiring liability on the part of the utilities as its agents." With respect to a cap on liability, the resolution stated, "SDG&E's cap on liability should be a portion of $1 million based on 2003 peak demand in its territory in comparison to the 2003 peak demand of the other two utilities."

12. DWR's protest to AL 1512-E-B reiterates DWR's position that SDG&E should have a cap of $1 million, and that absent a cap of that amount, DWR will continue to administer the DRP resources located in SDG&E's territory, essentially meaning that DWR will not finalize the proposed agency agreement.

13. SDG&E should increase its liability cap to $1 million so that it will be able to dispatch the DRP resources in its territory as we had originally envisioned in D.03-06-032.

14. The value of enabling the utilities to incorporate all available demand response programs, including the DRP, into their portfolios of demand response programs

and procurement strategies remains amongst our highest priorities and is consistent with our policy goals outlined in the Energy Action Plan.

15. DWR's protest should be granted.

THEREFORE IT IS ORDERED THAT:

1. DWR's protest is granted.

2. The agency agreement as proposed by SDG&E via Advice Letter 1512-E-B is rejected.

3. SDG&E shall file a supplemental advice letter with a revised agency agreement that includes a $1 million cap on liability within 7 days of the effective date of this resolution.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on July 21, 2005; the following Commissioners voting favorably thereon:

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STEVE LARSON
Executive Director

TO: PARTIES TO SAN DIEGO GAS AND ELECTRIC (SDG&E) ADVICE LETTER 1512-E-B

Enclosed is draft Resolution Number E-3938 of the Energy Division. It is in response to Advice Letter 1512-E-B filed by SDG&E and will appear on the agenda at the next Commission meeting held at least 30 days after the date of this letter. The Commission may vote on this Resolution at that time or it may postpone a vote until a later meeting. When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

All comments on the draft Resolution are due by July 11, 2005.

An original of the comments, along with a certificate of service should be submitted to:

Jerry Royer
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

A copy of the comments should be submitted in electronic format to:

Parties to SDG&E AL 1512-E-B (attached) and to:

Bruce Kaneshiro
Energy Division
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
bsk@cpuc.ca.gov

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft Resolution, a table of authorities and an appendix setting forth the proposed findings and ordering paragraphs.

Comments shall focus on factual, legal or technical errors in the proposed draft Resolution.

Replies to comments on the draft resolution may be filed (i.e., received by the Energy Division) on July 15, 2005, and shall be limited to identifying misrepresentations of law or fact contained in the comments of other parties. Replies shall not exceed five pages in length, and shall be filed and served as set forth above for comments.

Late submitted comments or replies will not be considered.

An accompanying declaration under penalty of perjury shall be submitted setting forth all the reasons for the late submission.

Please contact Bruce Kaneshiro of the Energy Division at 415-703-1187 if you have questions or need assistance.

Sincerely,

Bruce Kaneshiro
Program and Project Supervisor
Energy Division

Enclosure: Service List

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I certify that I have by electronic mail this day served a true copy of Draft Resolution E-3938 on all parties on SDG&E Advice Letter 1512-E-B service lists or their attorneys as shown on the attached list.

Dated June 21, 2005 at San Francisco, California.

_____

Bruce Kaneshiro

NOTICE

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.

Parties to SDG&E Advice Letter 1512-E-B

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